



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 22, 2022

IN THE MATTER OF:

Appeal Board No. 622921

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board No. 622921, the claimant appeals from the decision of the Administrative Law Judge filed April 4, 2022, insofar as it sustained the Commissioner of Labor's objection to the timeliness of the claimant's hearing request, effective March 4, 2020 through June 1, 2021; and modified the initial determination holding the claimant ineligible to receive benefits, effective March 4, 2020 and until the reason for the ineligibility no longer exists, on the basis that the claimant did not comply with reporting requirements to be effective June 1, 2021 through October 5, 2021, and, as so modified, sustained the determination.

In Appeal Board Nos. 622922 and 622923, the claimant appeals from the decision of the Administrative Law Judge filed April 4, 2022, insofar as they sustained the Commissioner's objection to the timeliness of the claimant's hearing request and continued in effect the initial determinations holding the claimant ineligible to receive benefits, effective March 9, 2020 through May 10, 2020, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and reducing the claimant's right to receive future benefits by 80 effective days on the basis that the claimant made a willful misrepresentation to obtain benefits.

In Appeal Board Nos. 622924 and 622925, the claimant appeals from the decisions of the Administrative Law Judge filed April 4, 2022, insofar as they modified the initial determinations holding the claimant ineligible to receive benefits, effective March 7, 2021 and until the reason for the ineligibility no longer exists, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$1,456 in Pandemic

Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) of \$3,000 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, to be effective August 3, 2020 through October 28, 2020 and June 1, 2021 through October 5, 2021, and as so modified, sustained the determinations.

At the combined telephone conference hearings before the Administrative Law Judge, testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. The claimant contends on appeal that he did not receive notice of the hearing held on April 4, 2022 until after the hearing was held because he had no knowledge that another hearing would be scheduled and because he was out of state before and on the day of the hearing. We note that, although the claimant appeared at the hearing held on March 9, 2022, it was not until after such hearing was held that the Administrative Law Judge reopened the matters for a further hearing. As such, the claimant could not have known that the matters would be scheduled for a hearing on April 4. Moreover, on appeal, the claimant has provided proof of his out of state travel at the time of the April 4 hearing. Under the circumstances, we deem it appropriate to afford the claimant another opportunity to appear.

The claimant testified at the hearing on March 9, 2022, that he travelled back and forth to the Netherlands in 2020 and in 2021. Since the issues herein involve ongoing ineligibility determinations beginning in 2020 and continuing until the reason no longer exists, the claimant should be prepared to testify with specificity as to the dates on which he was in the United States, and on which dates he was in the Netherlands beginning in 2020 and continuing onward. Moreover, the claimant is directed to produce copies of his passport showing the dates on which he traveled as well as any airline ticket receipts or travel itineraries showing the dates on which he travelled to the Netherlands beginning in March 2020. The claimant shall mail copies of any such evidence to the Hearing Section at least three days prior to the scheduled date of the remand hearing. The Administrative Law Judge shall question the claimant specifically in regard to the dates on which the claimant was in the Netherlands beginning in March 2020.

Moreover, as the claimant travelled to the Netherlands in both 2020 and in 2021, the Commissioner of Labor should appear at the remand hearing to explain whether the effective date of the determination holding the claimant ineligible for benefits on the basis that the claimant was not available for employment was properly stated as March 7, 2021 or whether it was properly amended by the Administrative Law Judge to be effective, March 7, 2020.

At the remand hearing, the Administrative Law Judge shall also enter into evidence, after appropriate confrontation, the initial determinations found on pages 131 through 134 of the hearing packet, which are dated October 15, 2020, and which found the claimant ineligible for benefits on the basis that he was not available for employment and charging the claimant with recoverable overpayments of \$1,456 in regular benefits and \$3,000 in Federal Pandemic Unemployment Compensation (FPUC) benefits. The Administrative Law Judge may take any further testimony and evidence necessary to decide these combined matters.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge, insofar as appealed from, be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of failure to report as required, failure to certify as required, willful misrepresentation to obtain benefits, in Appeal Board Nos. 622921, 622922 and 622923 and the issues of not available for employment and recoverable overpayment in Appeal Board Nos. 622924 and 622925, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decision, on the above issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER